

REMARKS

In response to the above-noted Office Action, Applicant respectfully submits the following remarks. This application includes claims 1-33. Claims 1-22 are allowed. Claims 23-33 have been rejected. Reconsideration of the rejection of claims 23-33 is requested in view of the remarks that follow.

Claims 23-33 were rejected under 35 U.S.C. 103(a) over information given in the Background section of the present patent application (referred to by the Examiner as "Applicant Admitted Prior Art (AAPA)"), in view of Bourlas et al. (U.S. Patent Application Publication 2006/0126549). Applicant respectfully traverses this rejection.

The present patent application was filed December 14, 2001 (claiming the benefit of a provisional application filed January 11, 2001). Bourlas is a divisional of U.S. Patent 7,023,798, which was filed December 21, 2001, i.e., after the filing date of the present patent application, claiming the benefit of U.S. Provisional Patent Application 60/258,428, filed December 27, 2000. Therefore, Bourlas is effective as prior art against the claims in the present patent application only to the extent that Provisional Application 60/258,428 discloses the subject matter that is cited against the claims in the present patent application. As noted in MPEP 706.02(f)(1)(B): "The 35 U.S.C. 102(e) date of a reference... is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 if the prior application(s) properly supports the subject matter used to make the rejection" (emphasis added). In other words, any disclosure made by Bourlas that does not also appear in

Provisional Application 60/258,428 is ineffective as prior art against the present patent application.

In the present Official Action, the Examiner alleged that Bourlas discloses setting different, respective upstream and downstream bit-loading rates responsive to conditions on the channel. The Examiner cited paragraphs 24, 25 and 41 in Bourlas in support of this contention. Provisional Application 60/258,428, however, does not include the subject matter of these paragraphs. The provisional application makes no mention at all of bit-loading rates, nor does it suggest that different upstream and downstream rates might be applied in any way for any reason. There is no hint in the provisional application of the use of different upstream and downstream bit-loading rates, as recited in independent claims 23 and 29. Hence, Bourlas is ineffective as prior art against the present patent application with respect to the subject matter that the Examiner cited against claims 23 and 29. In view of the patentability of independent claims 23 and 29, dependent claims 24-28 and 30-33 are also believed to be patentable. Therefore, Applicant respectfully submits that the present rejection should be withdrawn.

Applicant believes the remarks presented above to be fully responsive to all of the grounds of rejection raised by the Examiner. In view of these remarks, all of the claims now pending in this application are believed to be in condition for allowance. Prompt notice to this effect is respectfully requested.

If there are any fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. If a telephone interview would expedite the prosecution of this Application, the Examiner is invited to contact the undersigned at (310) 207-3800.

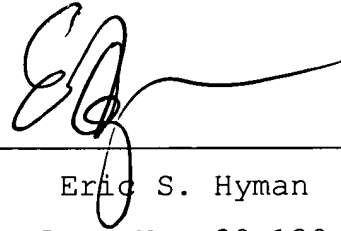
Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN

Dated:

10/18/06

By: _____



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10-18-2006
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